

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

JOSEPH WALKER, SARAH WALKER and	:	NO. 08 – 01,508
AME ZION CHURCH,	:	
Appellants	:	
	:	CONDITIONAL USE APPEAL
vs.	:	
	:	
CITY OF WILLIAMSPORT and CITY COUNCIL OF	:	
THE CITY OF WILLIAMSPORT,	:	
Appellees	:	

JOSEPH WALKER and SARAH WALKER,	:	NO. 08 – 01,507
Appellants,	:	
	:	CONDITIONAL USE APPEAL
vs.	:	
	:	
CITY OF WILLIAMSPORT and CITY COUNCIL OF	:	
THE CITY OF WILLIAMSPORT,	:	
Appellees	:	

OPINION AND ORDER

Before the Court is an appeal of City Council’s denial of a conditional use application submitted by Appellants for the use of their property at 324 Park Street, Williamsport, as a church and youth ministry, including an after-school program for children in grades 6 through 12. Argument on the appeal was heard April 7, 2009.

Following a hearing on April 10, 2008, City Council issued an adjudication on June 12, 2008, which denied both the conditional use application and a related land use plan.¹ Council found that Appellants failed to carry their burden of proof in various respects and that the objectors met their burden of proof with respect to certain criteria. In the instant appeal, Appellants argue Council abused its discretion based on their contention that Council’s conclusions and findings are not supported by the evidence.

¹ The land use plan proposed the use of a nearby lot as a parking lot to provide parking for the use proposed in the conditional use application.

In an appeal from a land use decision of City Council where no additional evidence is taken by the Court, the Court is limited to determining whether Council abused its discretion or committed an error of law. *See Brentwood Borough v. Cooper*, 431 A.2d 1177 (Pa. Commw. 1981). Here, Council found that the proposed use would not be compatible with the surrounding area, would not be consistent with the Comprehensive Plan, would not serve the population of the surrounding area, would not have adequate accessibility, would not be serviceable, and the public health, safety and welfare of the area would not be protected.

Initially, an applicant must demonstrate that the proposed use is within the standards of the applicable zoning ordinance. *In re Saunders*, 636 A.2d 1308 (Pa. Commw. 1994). Here, the applicable zoning ordinance is Section 1320.1 of the City's Codified Ordinances, which sets forth the following criteria:

1320.01 CONDITIONAL USES.

(a) Compatibility. The proposed use will be reviewed as to its relationship to and effect upon surrounding land uses and existing environmental conditions regarding the pollution of air, land and water; noise; potential of hazards and congestion; illumination and glare; restrictions to natural light and circulation of air.

(b) Purpose. Review the intended purpose of proposed use as it relates to the City's development objectives established in the Comprehensive Plan.

(c) Suitability. The nature of activity and population served, numbers of participating population, frequency of use, adequacy of space and spatial requirements, potential generation and impact of congestion will be reviewed as suitably related to the proposed location of potential use.

(d) Accessibility. Ingress and egress to the site of the proposed use, circulation and movement of pedestrian and vehicular traffic, parking requirements and accessibility to the existing and proposed City highway system will be reviewed.

(e) Serviceability. Reviews will be made as to the adequacy and availability of utility services and facilities such as sanitary and storm sewers, water, trash and garbage collection and disposal and the ability of the City to supply such services.

(f) Applicability. The proposed use will be reviewed as to its application to and

coordination with the planning policies of the City and its Comprehensive Plan and plans for land use, highways, schools, parks, sewers, water distribution and population growth.

(g) Health, Safety and Welfare. The proposed design, location and operation shall be reviewed as to whether the public health, safety, welfare and convenience shall be protected.

Further, the existence of a conditional use provision indicates legislative acceptance of the proposition that the use is consistent with the zoning plan. Id. Thus, the burden of proof with respect to subsections (a), (b), (c), and (f) is met by an applicant simply by showing that the proposed use is allowed as a conditional use in the area. According to the testimony of the Director of Community and Economic Development for the City of Williamsport, the proposed uses, as a church and youth ministry, both fall within the recommended uses for the area. N.T., April 10, 2008, at pp. 48-49.²

With respect to subsection (d), accessibility, accessibility to the city streets was demonstrated, as was sufficient parking: the zoning official for the City of Williamsport testified that the nearby parking lot contained enough spaces whether the property was used as a church or as a social organization.³ Id. at pp. 41-43.

With respect to subsection (e), serviceability, the only service which appears at issue is that of trash collection, and there was no evidence to indicate that the City would not be able to supply trash collection services; while one witness testified that in his opinion a dumpster could not be placed outside the building as the building occupied the entire property, such pre-supposes that a dumpster would be necessary. In any event, such does not support a finding that the City would not be able to supply trash collection services to this property, and there is

² The finding by Council, that “the applicant did not carry his burden of proof that the proposed use of the property was that of a church”, and that “the appropriate classification would be that of a social organization”, is thus without effect. Further, for the same reason, Council’s conclusions that the proposed use would not be compatible with the surrounding area, would not be consistent with the Comprehensive Plan, and would not serve the population of the surrounding area are in error.

³ The finding by Council that “the Applicant did not carry his burden of proof that there was adequate parking” is thus in error. Further, Council’s finding that the Applicant “failed to comply with Section 1345.03, as he did not provide a recordable document evidencing the owner of the lot would subject the property to parking uses” is without effect, as Section 1345.03(c) requires such a document only with the application for a building permit, and is not relevant to a conditional use application.

no reason why the City could not require of Appellants that trash collection be effectuated by placing a receptacle for such purpose on the nearby parking lot.⁴

With respect to subsection (f), health, safety and welfare, Council found that the objectors “met their burden of proof that the public safety would not be met due to the nature of the location of the building, traffic patterns, proposed parking lot and the dropping off and picking up of children”, and that “the public health, safety, and welfare of the area would not be protected due to the serious safety issue, as young children being dropped off at the proposed parking lot would have to cross the street.” The burden to show that the proposed use will substantially affect the health and safety of the community requires more than mere speculation of possible harm, however. The objectors must show a high degree of probability that the proposed use will substantially affect the health and safety of the community. That is, they must show that the proposed use would create an adverse impact *not normally generated by the type of use proposed*. *In re Saunders, supra* (emphasis added). In the instant case, the possible harm – that a child may be hit by a car as he crosses the street – is generated by many uses of the type proposed. In fact, testimony was presented (and it is doubtful it could be disputed) that many children cross the streets of the city on their way to and from school each day. Council erred, therefore, in finding an adverse impact on the health, safety and welfare of the community from the proposed use.

As Council’s findings and conclusions are not supported by the evidence, and as it appears that Appellants have met the criteria of the ordinance and the objectors have not shown that the proposed use will substantially affect the health and safety of the community, Appellants are entitled to approval of their conditional use application.

ORDER

AND NOW, this 21st day of April 2009, for the foregoing reasons, Appellants’ appeal from the decision of the City Council of the City of Williamsport is hereby

⁴ The City argues in its brief that this possibility was not mentioned during the hearing, only during the argument, but the existence of the parking lot was mentioned during the hearing and that provides a basis for Council to find serviceability by way of imposing conditions on the granting of the application, as it is in their discretion to do.

SUSTAINED. This matter is remanded to City Council for the approval, subject to conditions as deemed appropriate, of the conditional use application.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Fred Holland, Esq.
Andrew McReynolds, Esq., Montgomery, McCracken, Walker & Rhoads, LLP
1235 Westlakes Drive, Suite 200, Berwyn, PA 19312
J. David Smith, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson